

**PROFESSIONAL SERVICE AGREEMENT
BETWEEN SANTA FE COUNTY AND PUBLIC SAFETY PSYCHOLOGY GROUP LLC
TO PROVIDE EMPLOYEE ASSISTANCE PROGRAM SERVICES TO
SANTA FE COUNTY**

THIS AGREEMENT is made and entered into this 16th day of March 2016, between **SANTA FE COUNTY**, hereinafter referred to as the "County" and **PUBLIC SAFETY PSYCHOLOGY GROUP, LLC** whose principal place of business is 8341 Washington St. NE, Albuquerque, NM 87199, hereinafter referred to as the "Contractor".

WHEREAS, the Santa Fe County Human Resources Department is required to conduct provide pre-employment screenings; and

WHEREAS, pursuant to NMSA 1978, Sections 13-1-112 and 13-1-117, competitive, sealed proposals were solicited via a formal Request for Proposals (RFP) No. 2016-0099-HR/MM to provide On Call Emergency Psychologist Services for Public Safety Employees; and

WHEREAS, based upon the evaluation criteria established within the RFP for the purposes of selecting the most qualified offeror, the County has determined the Contractor as the most responsive and highly rated offeror; and

WHEREAS, the County requires the services of the Contractor and the Contractor is willing to provide these services and both parties wish to enter into this Agreement.

NOW, THEREFORE, it is agreed between the parties:

1. CONTRACTOR'S SCOPE OF WORK

A. Provide Employee Assistance Program (EAP) services in the form of on-call coverage by a psychologist or other qualified mental health staff member 24/7, 365 days a year to respond to critical incidents and as needed by the County Public Safety Department, Fire, Corrections, RECC and Sheriff's Department. Contractor will also assist the County to facilitate Return to Duty/Fitness for Duty psychological screening interviews.

B. Contractor must be familiar with current research literature on psychological screening of law enforcement officers and other public safety officers and current state and relevant federal fair employment laws.

C. Contractor's services shall include the following specific services:

(1) **Individual Counseling:** Public Safety and Sheriff Employees may request individual counseling after critical incidents on their own behalf for the special stresses related to public safety and law enforcement. Public Safety employees may request individual psychological services directly from the Contractor. Employees may request counseling for personal and professional issues. Contractor's counseling services will be specific to the individual, his or her job duties and address the stresses of Public Safety and law enforcement.

(2) **Mandated Referrals for Assessment/ Treatment and Fitness for Duty Evaluations (FFDE):** In providing the services under this Agreement, the Contractor will first provide an employee with all reasonable counseling intervention resources as preliminary or preventative measures before a recommendation for an FFDE is considered. If all intervention measures have been exhausted, the Contractor may recommend, or the County may request, that a formal FFDE be completed. When the Contractor and County agree that an FFDE is appropriate, the Contractor will refer the matter to a qualified and licensed psychologist to perform an FFDE. An FFDE may be requested by the County to the Contractor, or by the Contractor based on the Contractor's efforts to engage in intermediate levels of intervention for an employee. An FFDE may be recommended for sworn and non-sworn employees of the Department of Public Safety and Sheriff's Department. The psychologist shall be fully certified and qualified to complete an FFDE. The psychologist will provide the County with a professional opinion as to whether the employee can perform the essential functions of his or her job and/or whether additional psychological services are needed. FFDEs will be coordinated with the Public Safety Director, County Sheriff and a referral for an FFDE will be coordinated between the County Human Resources Director and the Contractor.

(3) **Critical Incidents:** In law enforcement critical incidents, the Contractor shall provide advice or consultation to the administration, response or intervention as designated by the Human Resource Director, Public Safety Director, County Sheriff or designee to resolve the situation; and debriefing or individual counseling sessions to address post-traumatic stress and minimize any adverse psychological impact on an employee and his or her work functions. Critical incident debriefings with police personnel and individual counseling for Department of Public Safety and Sheriff Employees involved in critical incidents will occur after each critical incident as requested by Santa Fe County. Intervention with Public Safety and employees of the Sheriff's Department will occur as quickly as possible 24/7, 365 days a year. Any critical incident debriefings will be coordinated between the Human Resource Department and the Contractor and will occur as soon as possible following the critical incident.

(4) **Tests/Evaluations:** Any County requested evaluation will include a battery of standardized tests followed by a comprehensive interview with the employee. Any testing administered must be objective, job-related, and non-discriminatory and validated for by with the Department of Public Safety and Sheriff's Department. The evaluation must be conducted in accordance with the Americans with Disabilities Act (ADA) because the evaluation is considered "medical" in that it may provide evidence that could lead to identifying a mental or emotional disorder or impairment. Subsequent to the evaluation, a report will be provided to the Human Resources Director with specific recommendations regarding the employee based on the essential function of the position. All HIPAA requirements and guidelines must be followed, including waiver forms and providing the employee with access to their medical records upon request. All letters and memos will be marked "confidential", and all e-mails with medical or other confidential personal information will be sent titled "confidential medical information" in the subject heading.

(5) **Consultation/Participation with Department Activities:** The Department of Public Safety and Sheriff's Department will consult with the Contractor for advice, information, or request participation in activities as authorized by the Human Resource Director, Public Safety Director or his designee. Contractor is encouraged to participate in activities that will

provide better understanding of the County and its departments and as authorized by the Human Resource Director. Examples may include attendance at meetings, trainings, consultations with department representatives, supervisors or executive staff on County procedures.

(6) **Compliance/Records:** Contractor's psychological exams must comply with any applicable accreditation standards and will adhere to ADA, HIPAA and other legal guidelines and legal requirements. All letters and memos will be marked "confidential". Contractor will maintain confidentiality of copies of all case notes, test results, tapes, memos, letters, e-mails and any other psychological data in a secure manner and in a secure area for at least six years after the termination of the term of this Agreement.

2. ADDITIONAL SERVICES

A. The parties agree that all tasks set forth in Section 1 (Scope of Work), of this Agreement shall be completed in full, to the satisfaction of the County, in accordance with professional standards and for the amount set forth in Section 3 (Compensation, Invoicing and Set-off), of this Agreement, and for no other cost, amount, fee or expense.

B. The County may from time to time request changes in the scope of work to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between the County and the Contractor, shall be incorporated in a written amendment to this Agreement.

3. COMPENSATION, INVOICING AND SET-OFF

A. In consideration of its obligations under this Agreement the Contractor shall be compensated as follows:

- 1) County shall pay to the Contractor for services satisfactorily performed at the rate of \$60.00/hour. The Contractor's services shall not exceed 10 hours per week. Contractor will submit invoices to the County at the end of each month during the term of this Agreement. The invoices will be accompanied by a written report that describes the Contractor's hours of service provided and the number of participants or employees who received training from Contractor.
- 2) The total amount payable to the Contractor under this Agreement shall not exceed thirty one thousand dollars (\$31,000.00) exclusive of New Mexico gross receipts tax. Any New Mexico gross receipts tax levied on the amounts payable under this Agreement shall be paid by the County to the Contractor.
- 3) This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. The County will notify the Contractor when the

services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing.

B. The Contractor shall submit a written request for payment to the County when payment is due under this Agreement. Upon the County's receipt of the written request, the County shall issue a written certification of complete or partial acceptance or rejection of the contractual items or services for which payment is sought. The Contractor acknowledges and agrees that the County may not make any payment hereunder unless and until it has issued a written certification accepting the contractual items or services. Within 30 days of the issuance of a written certification accepting the contractual items or services, the County shall tender payment for the accepted items or services. In the event the County fails to tender payment within 30 days of the written certification accepting the items or services, the County shall pay late payment charges of one and one-half percent (1.5%) per month, until the amount due is paid in full.

C. In the event the Contractor breaches this Agreement, the County may, without penalty, withhold any payments due the Contractor for the purpose of set-off until such time as the County determines the exact amount of damages it suffered as a result of the breach.

D. Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payment.

4. EFFECTIVE DATE AND TERM

This Agreement shall, upon due execution by all parties, become effective as of the date first written above and shall terminate one (1) year later, unless earlier terminated pursuant to Section 5 (Termination) or Section 6 (Appropriations and Authorizations). The County has the option to extend the contract at the same price, terms and conditions for three additional years in one-year increments. In no event, shall the term of this Agreement exceed four years total. The County may exercise this option by submitting a written notice to Contractor that the term of this Agreement will be extended an additional year. The notice must be submitted to Contractor at least sixty (60) days prior to expiration of the term.

5. TERMINATION

A. Termination of Agreement for Cause. Either party may terminate the Agreement based upon any material breach of this Agreement by the other party. The non-breaching party shall give the breaching party written notice of termination specifying the grounds for the termination. The termination shall be effective 30 days from the breaching party's receipt of the notice of termination, during which time the breaching party shall have the right to cure the breach. If, however, the breach cannot with due diligence be cured within 30 days, the breaching party shall have a reasonable time to cure the breach, provided that, within 30 days of its receipt of the written notice of termination, the breaching party began to cure the breach and advised the non-breaching party in writing that it intended to cure.

B. Termination for Convenience of the County. The County may, in its discretion, terminate this Agreement at any time for any reason by giving the Contractor written notice of termination. The notice shall specify the effective date of termination, which shall not be less than 15 days from the Contractor's receipt of the notice. The County shall pay the Contractor for acceptable work, determined in accordance with the specifications and standards set forth in this Agreement, performed before the effective date of termination but shall not be liable for any work performed after the effective date of termination.

6. APPROPRIATIONS AND AUTHORIZATIONS

This Agreement is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Board of County Commissioners of the County and/or, if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Agreement shall terminate upon written notice by the County to the Contractor. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse the Contractor for expenditures made in the performance of this Agreement. The County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the County. The County's decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this Agreement shall be final and not subject to challenge by the Contractor in any way or forum, including a lawsuit.

7. INDEPENDENT CONTRACTOR

The Contractor and its agents and employees are independent contractors and are not employees or agents of the County. Accordingly, the Contractor and its agents and employees shall not accrue leave, participate in retirement plans, insurance plans, or liability bonding, use County vehicles, or participate in any other benefits afforded to employees of the County. Except as may be expressly authorized elsewhere in this Agreement, the Contractor has no authority to bind, represent, or otherwise act on behalf of the County and agrees not to purport to do so.

8. ASSIGNMENT

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the advance written approval of the County. Any attempted assignment or transfer without the County's advance written approval shall be null and void and without any legal effect.

9. SUBCONTRACTING;

A. The Contractor shall not subcontract or delegate any portion of the services to be performed under this Agreement without the advance written approval of the County. Any attempted subcontracting or delegating without the County's advance written approval shall be null and void and without any legal effect.

B. With respect to the Contractor's Scope of Work in Section 1.C.(2) above, Contractor is authorized to subcontract with a licensed psychologist who is certified or qualified

to perform a formal FFDE in the state of New Mexico. A psychologist who is authorized to complete a FFDE will be considered an independent subcontractor of the Contractor and not of Santa Fe County. The Contractor shall be fully responsible for any payments or compensation to be paid to the psychologist who performs an FFDE.

10. PERSONNEL

A. All work performed under this Agreement shall be performed by the Contractor or under its supervision.

B. The Contractor represents that it has, or will secure at its own expense, all personnel, including a licensed psychologist to perform and FFED, required to discharge its obligations under this Agreement. Such personnel (i) shall not be employees of or have any contractual relationships with the County and (ii) shall be fully qualified and licensed or otherwise authorized or permitted under federal, state, and local law to perform such work.

11. RELEASE

Upon its receipt of all payments due under this Agreement, the Contractor releases the County, its elected officials, officers, agents and employees from all liabilities, claims, and obligations whatsoever arising from or under or relating to this Agreement.

12. CONFIDENTIALITY

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the County.

13. PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT

A. The County has the unrestricted right to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other material prepared under or pursuant to this Agreement.

B. The Contractor acknowledges and agrees that any material produced in whole or in part under or pursuant to this Agreement is a work made for hire. Accordingly, to the extent that any such material is copyrightable in the United States or in any other country, the County shall own any such copyright.

C. The County agrees that Contractor has created and developed its own training materials that may be used by the Contractor in performing the work under this Agreement. Contractor's ownership or intellectual property interest in its preexisting training materials including any copyright in such materials, will remain the property of the Contractor.

14. CONFLICT OF INTEREST

The Contractor represents that it has no and shall not acquire any interest, direct or indirect, that

would conflict in any manner or degree with the performance of its obligations under this Agreement.

15. NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED

This Agreement may not be modified, altered, changed, or amended orally but, rather, only by an instrument in writing executed by the parties hereto. The Contractor specifically acknowledges and agrees that the County shall not be responsible for any changes to Section 1 (Scope of Work), of this Agreement unless such changes are set forth in a duly executed written amendment to this Agreement.

16. ENTIRE AGREEMENT; INTEGRATION

This Agreement incorporates all agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this written Agreement. No prior or contemporaneous agreement, covenant or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

17. NOTICE OF PENALTIES

The Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation. In addition, New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kickbacks.

18. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

A. The Contractor agrees to abide by all federal, state, and local laws, ordinances, and rules and regulations pertaining to equal employment opportunity and unlawful discrimination. Without in any way limiting the foregoing general obligation, the Contractor specifically agrees not to discriminate against any person with regard to employment with the Contractor or participation in any program or activity offered pursuant to this Agreement on the grounds of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation, or gender identity.

B. The Contractor acknowledges and agrees that failure to comply with this Section shall constitute a material breach of this Agreement.

19. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW

A. In performing its obligations hereunder, the Contractor shall comply with all applicable laws, ordinances, and regulations.

B. Contractor shall comply with the requirements of Santa Fe County Ordinance 2014-1 (Establishing a Living Wage).

C. This Agreement shall be construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules. Contractor and the County agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be federal and state district courts of New Mexico, located in Santa Fe County.

20. RECORDS AND INSPECTIONS

A. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to the County as part of the procurement process, the Contractor agrees to (i) maintain such books and records during the term of this Agreement and for a period of six (6) years from the date of final payment under this Agreement; (ii) allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with generally accepted accounting principles (GAAP).

B. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to County as part of the procurement process, the Contractor also agrees to require any subcontractor it may hire to perform its obligations under this Agreement to (i) maintain such books and records during the term of this Agreement and for a period of six (6) years from the date of final payment under the subcontract; (ii) to allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with GAAP.

21. INDEMNIFICATION

A. The Contractor shall defend, indemnify, and hold harmless the County and its elected officials, agents, and employees from any losses, liabilities, damages, demands, suits, causes of action, judgments, costs or expenses (including but not limited to court costs and attorneys' fees) resulting from or directly or indirectly arising out of the Contractor's performance or non-performance of its obligations under this Agreement, including but not limited to the Contractor's breach of any representation or warranty made herein.

B. The Contractor agrees that the County shall have the right to control and participate in the defense of any such demand, suit, or cause of action concerning matters that relate to the County and that such suit will not be settled without the County's consent, such consent not to be unreasonably withheld. If a conflict exists between the interests of the County and the Contractor in such demand, suit, or cause of action, the County may retain its own counsel to represent the County's interest.

C. The Contractor's obligations under this section shall not be limited by the provisions of any insurance policy the Contractor is required to maintain under this Agreement.

22. SEVERABILITY

If any term or condition of this Agreement shall be held invalid or non-enforceable by any court

of competent jurisdiction, the remainder of this Agreement shall not be affected and shall be valid and enforceable to the fullest extent of the law.

23. NOTICES

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the County: Santa Fe County
 Office of the County Attorney
 102 Grant Avenue
 Santa Fe, New Mexico 87501

To the Contractor: Public Safety Psychology Group, LLC
 Attention: Dr. Troy Rodgers, Psy.D.
 PO Box 92002
 Albuquerque, New Mexico 87199

24. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

The Contractor hereby represents and warrants that:

A. This Agreement has been duly authorized by the Contractor, the person executing this Agreement has authority to do so, and, once executed by the Contractor, this Agreement shall constitute a binding obligation of the Contractor.

B. This Agreement and Contractor's obligations hereunder do not conflict with Contractor's corporate agreement or any statement filed with the New Mexico Secretary of State on Contractor's behalf.

C. Contractor is legally registered and is properly licensed by the State of New Mexico to provide the services anticipated by this Agreement and shall maintain such registration and licensure in good standing throughout the duration of the Agreement.

25. FACSIMILE SIGNATURES

The parties hereto agree that a facsimile signature has the same force and effect as an original for all purposes.

26. NO THIRD-PARTY BENEFICIARIES

This Agreement was not intended to and does not create any rights in any persons not a party hereto.

27. INSURANCE

A. General Conditions. The Contractor shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.

B. General Liability Insurance, Including Automobile. The Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,000,000.00 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the County by the Contractor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Agreement is an insured contract. Santa Fe County shall be a named additional insured on the policy.

C. Malpractice/Errors and Omissions Insurance. The Contractor shall procure and maintain during the life of this Agreement professional liability or errors and omissions insurance in amounts not less than \$5,000,000.

D. Increased Limits. If, during the life of this Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-29, as amended), the Contractor shall increase the maximum limits of any insurance required herein.

28. PERMITS, FEES, AND LICENSES

Contractor shall procure all permits and licenses, pay all charges, fees, and royalties, and give all notices necessary and incidental to the due and lawful performance of its obligations hereunder.

29. NEW MEXICO TORT CLAIMS ACT

No provision of this Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by County or its "public employees" at common law or under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.

30. CAMPAIGN CONTRIBUTION DISCLOSURE FORM

The Contractor agrees to compute and submit simultaneous with execution of this Agreement a Campaign Contribution Disclosure Form approved by the County.

31. SURVIVAL

The provisions of following paragraphs shall survive termination of this Contract; INDEMNIFICATION; RECORDS AND INSPECTION; RELEASE, CONFIDENTIALITY, PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT; COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW; NO THIRD-PARTY BENEFICIARIES; SURVIVAL.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first written above.

SANTA FE COUNTY

Katherine Miller
Katherine Miller
Santa Fe County Manager

3-16-16
Date

Approved as to form

Gregory S. Shaffer
Gregory S. Shaffer
Santa Fe County Attorney

3-10-16
Date

Finance Department

Carole H. Jaramillo
Carole H. Jaramillo
Finance Director

3/13/16
Date

CONTRACTOR:

Troy J. Rodgers
(Signature)

3/9/16
Date

Troy J. Rodgers
(Print Name)

Agency Director
(Print Title)

